

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

11-0029R

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE GRANT COMMUNITY SCHOOL COLLABORATIVE FOR THE OPERATION OF THE GRANT COMMUNITY RECREATION CENTER.

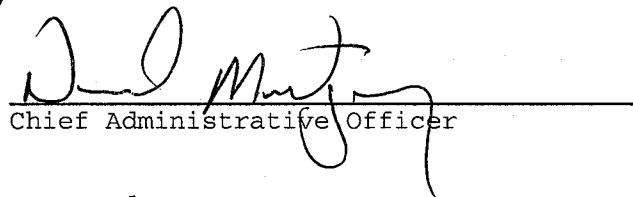
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized and directed to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with the Grant Community School Collaborative for the operation of the Grant Community Recreation Center.

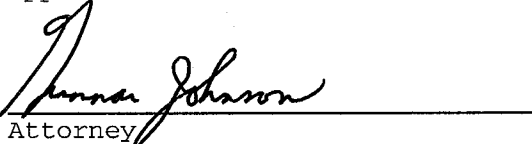
Approved:


Department Director

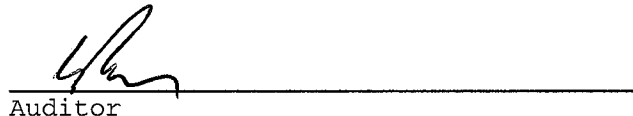
Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

P&R/ATTY TLL:dma 01/11/2011

STATEMENT OF PURPOSE: This resolution authorizes an agreement between the City of Duluth and the Grant Community School Collaborative, a Minnesota non-profit corporation. Under the terms of the agreement, the Grant Community School Collaborative will operate the Grant Community Recreation Center at 901 East 11th Street. The Collaborative will operate the recreation center for recreational and community advancement programs, coordinate use of the building by other community-based groups and for occasional private rentals.

The City owns the recreation center building, while the Independent School District #709 owns the real estate upon which the building sits. The City will provide the building facility at no cost in exchange for year-round operation, routine maintenance and cleaning of the facility by the Grant Community School Collaborative.

AGREEMENT BETWEEN THE CITY OF DULUTH AND THE GRANT COMMUNITY SCHOOL COLLABORATIVE

THIS AGREEMENT, made and entered into this ____ day of _____, 2011, is by and between the **CITY OF DULUTH**, a municipal corporation under the laws of the State of Minnesota (hereinafter "City") and the **GRANT COMMUNITY SCHOOL COLLABORATIVE**, a Minnesota non-profit corporation (hereinafter "GCSC"), collectively referred to as the "Parties". (A list of the members of the collaborative is attached hereto as Exhibit A.) In consideration of the mutual covenants and conditions hereinafter contained, the Parties agree as follows:

I. Purpose

1.1 The City owns the Grant Community Recreation Center building, together with various fixtures and personal property contained therein, located at 901 E. 11th Street, City of Duluth, St. Louis County, Minnesota (hereinafter the "premises".) The Independent School District #709 ("ISD 709") owns the real estate and adjoining grounds upon which the Grant Community Recreation Center building is located. ISD 709 is a member of the GCSC. The Parties agree, subject to the terms and conditions of a Joint Powers Agreement between the City and ISD 709, that GCSC shall have the right to operate, manage and use the Grant Community Recreation Center building for recreational and community advancement purposes as set forth herein.

II. Term

2.1 This Agreement shall be for a term of one year commencing January 1, 2011 and ending December 31, 2011 and shall thereafter automatically be renewed for successive one (1) year periods, unless earlier terminated as provided herein.

III. Maintenance and Operation

3.1 The City makes no warranty, either express or implied, that the premises or equipment thereon are suitable for any purpose and GCSC takes and occupies the premises "as is."

3.2 GCSC shall be responsible for daily routine cleaning of the premises and placing trash into the on-site dumpster. GCSC shall provide, at its expense, all staff, equipment and cleaning supplies necessary to carry out this provision.

3.3 GCSC shall be responsible for and provide, at its expense, those items required for daily operation and maintenance of the premises, including but not limited to, interior light bulbs, paper products, plastic products (e.g., garbage bags), program equipment and supplies,

minor repairs, etc. so as to maintain the premises in a reasonable state of repair.

3.4 GCSC shall be responsible for wireless internet service and any telephone lines and telephones over and above the single service line and telephone provided by the City per paragraph 3.6.

3.5 The City shall be responsible for major repairs to the building and equipment, including any repair work that requires a licensed or skilled trades person. If major repair work is required, GCSC shall promptly provide sufficient written notice to the City so that the City can make the necessary repairs or arrange for a service provider of its choice to make the repairs.

3.6 The City shall be responsible for the following utilities and services: electric, heat, water & sewer, garbage pick-up and service for one telephone line along with one telephone.

3.7 GCSC shall be responsible for snow removal (including the parking lot and the sidewalks) in a timely manner and in accordance with the Duluth City Code. GCSC shall be responsible for mowing the grass.

3.8 GCSC shall be solely responsible for managing the use of the building to include scheduling recreational and community events and programs. GCSC shall be solely responsible for overseeing and supervising such events and programs. GCSC agrees that, subject to availability, it shall allow use of the premises by community-based groups and the City at no charge.

3.9 GCSC may rent the building to private groups, clubs or parties and may, at its discretion, charge a rental fee. GCSC shall collect the rental fees hereunder and shall deposit them into a separate account and use the monies as set forth in paragraph 6.1 of this Agreement. GCSC shall be solely responsible for overseeing and supervising these rentals and all user groups (including guests, invitees and agents thereof) of the premises and shall be responsible for ensuring compliance with all rules and laws.

IV. Alterations and Improvements

4.1 GCSC may make suitable improvements or alterations to the premises upon advance written approval from the City. All such improvements shall become the property of the City. Prior to commencing any improvements or alterations, GCSC shall submit to the City a Project Proposal Request along with detailed plans. These documents shall be submitted to the City at least forty-five (45) days before the planned commencement of the work. GCSC shall be solely responsible for the cost of such improvements or alterations. No work may begin on any approved project until all necessary building permits are secured. All construction shall conform to state law and the Duluth City Codes.

4.2 GCSC agrees that not less than thirty (30) days prior to commencement of any construction, alteration or improvement on said premises, GCSC will provide the City with sufficient proof of required insurance, including worker's compensation. Such proof of insurance must be approved by the City Attorney before the commencement of any construction hereunder.

V. Alcohol

5.1 The possession, use or sale of alcohol is permitted on the premises only under the following conditions:

- * Alcohol may be possessed, consumed or served only when the appropriate permit or license has been obtained from the City prior to the event and all application, fee and other requirements have been met.
- * Alcohol may be sold only when the appropriate on-sale alcoholic beverage license has been obtained from the City prior to the event and all application, fee and other requirements have been met.
- * At least thirty (30) day's written notice of a request to serve or sell alcohol shall be provided to the City before the event to give the City sufficient time to review the request. Requests that are not timely submitted may be denied.
- * GCSC must have adequate procedures must be in place to ensure that no one under the age of twenty-one (21) is served alcohol and to ensure that no one is served alcohol in an amount to cause intoxication.
- * Depending on the request, licensed peace officer(s) may be required to attend the event.
- * All state laws and Duluth City Code provisions shall be followed at all times.
- * The City reserves the right to prohibit the serving, sale or possession of alcohol on the premises.

VI. Financial Accounting and Reporting

6.1 GCSC agrees that all monies (paid admissions, rental fees, etc.) received or collected by GCSC for usage of the premises shall be deposited by GCSC into a separate account and used solely for the operation and maintenance of the premises. GCSC further agrees that it shall keep this account in such a fashion that, at all times, an accurate accounting may be made by the City.

6.2 GCSC agrees to file with the City Auditor and the Parks and Recreation Division an annual itemized statement accurately showing all GCSC income and expenses related to the operation of the premises. The statement shall be filed no later than May 1 of each year this Agreement remains in effect and shall include all required information from the previous year.

6.3 The annual itemized statement required above shall also include a current listing of all of all officers, board members and the official local contact person responsible for the administration of this Agreement, together with addresses and telephone numbers. Also, a copy of GCSC's current by-laws and articles of incorporation shall be provided to the City.

6.4 Pursuant to Minn. Stat. §16C.05, subd. 5, the books, records, documents and accounting procedures and practices of GCSC relevant to this Agreement shall be subject to examination by the State and/or Legislative Auditor, as appropriate, for a minimum of six (6) years.

VII. Insurance

7.1 During the entire term of this Agreement, GCSC shall procure and maintain continuously in force public liability insurance with limits of not less than one million dollars (\$1,000,000) Single Limit together with fire liability insurance with limits of not less than two hundred thousand dollars (\$200,000). The insurance company shall be authorized to do business in Minnesota.

7.2 The City of Duluth shall be named on the policy of insurance as an Additional Insured. GCSC shall provide the City with a certificate of insurance showing the required coverages. GCSC agrees that the policy of insurance cannot be cancelled or materially changed without thirty (30) days advance written notice to the City.

VIII. City Access

8.1 GCSC shall permit the City, its officials, employees or agents to access the premises at any time. GCSC shall not change the locks or otherwise prohibit the City access to any portion of the premises. The City shall be exclusively responsible for the duplication and distribution of all keys.

8.2 The City may schedule activities and events on the premises on a priority basis when not in use by GCSC. The City shall not be charged a fee for such use.

IX. Smoking and Tobacco

9.1 There shall be no smoking or use of tobacco whatsoever on the premises. "Tobacco" shall be defined as set forth in §609.685 of the Minnesota Statutes. This includes not only cigarettes, cigars and pipes, but also any product containing, made or derived from tobacco that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means or any component, part, or accessory of a tobacco product. Electronic-cigarettes shall not be allowed.

X. No Discrimination

10.1 GCSC agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

XI. Relationship of Parties

11.1 It is agreed by the Parties that nothing contained herein is intended to be construed in any manner as creating or establishing a relationship of co-partners between the Parties hereto. GCSC and its staff, officers, employees or volunteers shall not be construed as an agent, representative or employee of the City for any purpose or in any manner whatsoever.

XII. Termination

12.1 Upon termination of this Agreement, GCSC agrees to surrender the possession of the premises to the City in as good condition and state of repair as at the time GCSC took possession of the premises, except for reasonable wear and tear.

12.2 Either Party may terminate this Agreement upon ninety (90) days written notice. Notice shall be considered sufficient if delivered in person or mailed by regular United States mail, postage prepaid, addressed to the Parties at the addresses set forth in paragraph 22.1 or to such other respective persons or addresses as the Parties may designate to each other in writing from time to time.

XIII. Indemnification

13.1 GCSC shall defend, indemnify and hold harmless the City and its officials, employees and agents from any liabilities, judgments, losses, costs or charges (including attorneys' fees) incurred by the City or any of its officials, employees or agents as a result of any claim, demand, action or suit relating to any bodily injury (including death), loss or property damage caused by, arising out of, related to or associated with the use, management, maintenance or operation of the premises by GCSC.

XIV. Waiver and Assumption of Risk

14.1 GCSC knows, understands and acknowledges the risks and hazards associated with using the premises and hereby assumes any and all risks and hazards associated therewith. GCSC hereby irrevocably waives any and all claims against the City or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by GCSC as a result of its use, management, maintenance or operation of the premises and hereby irrevocably releases and discharges the City and any of its officials, employees or agents from any and all claims of liability.

XV. Immunity

15.1 Nothing in this Agreement is intended or should be construed as a waiver by the City of any immunities, defenses or other limitations on liability to which the City is entitled by law, including, but not limited to, the liability of limits under Minnesota Statutes Chapter 466.

XVI. Merger Clause

16.1 This Agreement constitutes the entire agreement between the parties and supercedes any prior or contemporaneous representations or agreements, whether written or oral, between the Parties. Any amendment, modification or supplementation to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement or their successors in office.

XVII. Applicable Law

17.1 This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder will be those courts located in St. Louis County.

XVIII. Third Parties

18.1 No provision of this Agreement shall inure to the benefit of any third person so as to constitute any such person as a third-party beneficiary of this Agreement or of any one or

more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

XIX. Assignment

19.1 GCSC shall not in any way assign or transfer any of its rights or interests under this Agreement without the prior written approval of the City.

XX. Waiver

20.1 The failure of the City to enforce any provision of this Agreement shall not be construed as, nor constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

XXI. Severability

21.1 The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

XXII. Notices

22.1 Notices required under the terms of this Agreement shall be addressed to the Parties as follows:

City of Duluth
Parks and Recreation Division
Attention: Kathy Bergen
12 East Fourth Street
Duluth, Minnesota 55805
telephone: (218) 730-4309

Grant Community School Collaborative
Attention: Kathy Bogen
Executive Director
1027 North 8th Avenue East
Duluth, Minnesota 55805
telephone: (218) 733-2016

CITY OF DULUTH

Grant Community School Collaborative

Mayor

Executive Director

Grant Community School Collaborative

Chair, Board of Directors

ATTEST:

City Clerk

APPROVED AS TO FORM:

DULUTH PARKS & RECREATION
DIVISION

City Attorney

COUNTERSIGNED:

City Auditor

EXHIBIT A

Members of the Grant School Community Collaborative:

1. College of St. Scholastica
2. East Hillside Patch
3. East Hillside Community Club
4. Grant-Nettleton Community Club
5. YWCA of Duluth